

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 12, 2010

D055191 In re Owen C., a Juvenile
The appeals are dismissed. Huffman, J.; We Concur: McConnell, P.J., McIntyre, J.

D057095 Hamilton v. Superior Court of San Diego County/People
The petition is denied.

D056093 People v. Capone
D056870 In re Capone on Habeas Corpus
(Consolidated) The judgment is affirmed; the petition is denied.
Benke, Acting P.J.; We Concur: Huffman, J., Irion, J.

D046394 People v Freeman
D049238 In re Freeman on Habeas Corpus
The judgment is affirmed. The petition for writ of habeas corpus is denied.
Haller, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.

**D057093 Armstrong v. Superior Court of San Diego County/Department of Corrections
and Rehabilitation et al.**
The "appeal from the judgment of the superior court" is treated as a petition
for writ of mandate. The petition has been read and considered by
Justices Nares, McDonald and McIntyre.

The attachments show that Jerry Armstrong is attempting to appeal a judgment of
dismissal in a limited civil case. "To appeal from a judgment or appealable order in
a limited civil case an appellant must serve and file a notice of appeal in the
superior court that issued the judgment or order being appealed." (Cal. Rules of
Court, rule 8.821(a)(1).) Jurisdiction on the appeal lies with the appellate division
of the superior court, not this court. (Code Civ. Proc., § 904.2.)

D055238 In re Z.L., a Juvenile
The request for publication of the opinion is denied.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and
 The Honorable Associate Justices Cynthia Aaron and Joan Irion
Clerk: D. Moore

D054984 People v. Roberts
Cause called on merits. Paul R. Ward, Esq. argued for appellant. Melodie Dan,
Certified Law Student, argued for respondent. Mr. Ward replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 12, 2010 (Continued)

Court recessed at 9:24 a.m. to change panel members.

New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and
The Honorable Associate Justices Richard Huffman and Cynthia Aaron

D054609 Tate v. Wilburn

Cause called on merits. Marc Etienne Angelucci, Esq. argued for appellant.
Ronn Brisbee, Esq. argued for respondent. Mr. Angelucci replied.
Cause submitted.

Court recessed at 9:49 a.m. until 1:30 p.m.

Court recessed at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and
The Honorable Associate Justices James McIntyre and Terry O'Rourke
Clerk: D. Moore

D054406 In re N.S., a juvenile

Cause called on merits. Jan Burns Norman, Esq. argued for appellant.
Andrea Natalia Cortina, Deputy Attorney General, argued for respondent.
Cause submitted.

D052523 Davis v. Wright

Cause called on merits. Barry Post, Esq. argued for appellant. Bob Steele, Esq.
argued for respondent. Mr. Post replied. Cause submitted.

**D055422 Pinnacle Museum Tower Association v. Pinnacle Market Development (US),
LLC. et al.**

Cause called on merits. Robert Gregory Amundson, Esq. argued for appellant.
Bruce Mayfield, Esq. argued for respondent. Mr. Amundson replied. Cause to be
submitted at a later date.

Court recessed at 2:41 p.m. until Tuesday, April 13, 2010 at 9:00 a.m.

D057079 Huff v. Superior Court of Imperial County/Wilkins et al.
The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 12, 2010 (Continued)

D050554 People v. McKee

On remand from the California Supreme Court, we remand the matter to the San Diego County Superior Court for further proceedings consistent with the opinion of the California Supreme Court in *People v. McKee* (Jan. 28, 2010, S162823) ____ Cal.4th ____ [2010 D.A.R. 1545].
McDonald, J.; We Concur: Huffman, Acting P.J., Aaron, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 13, 2010

D056862 Pacific Millenium (U.S.) Corporation et al. v. Merjan Financial Corporation et al.

Upon written request filed by appellant, the appeal filed on February 11, 2010 is dismissed. The stay issued on March 9, 2010 is vacated and the petition for writ of supersedeas filed on February 25, 2010 is dismissed as moot. The remittitur is ordered to issue immediately.

D057036 Burnham Institute v. Parsons

Because appellant did not timely pay the filing fee, the appeal is dismissed. (Cal. Rules of Court, rule 8.100(c)(3).)

D055135 People v. Muneton

The judgment is affirmed. McDonald, J.; We Concur: Nares, Acting P.J., Haller, J.

D055928 National Student Consolidation Corp. v. Cooper

Upon filing a written abandonment of appeal, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

D056688 In re I.C et al., Juveniles

This case, including the letter briefs filed by counsel for appellants James C. and the children, has been reviewed by Justices Aaron, Nares and McDonald. The appeals are dismissed as moot.

Court convened at 9:00 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and
The Honorable Associate Justices James McIntyre and Terry O'Rourke
Clerk: D. Moore

D055050 In re S.A., a juvenile

Cause called on merits. Heather Lee Beugen, Esq. argued for appellant. Ian Schuler, Certified Law Student, argued for respondent. Ms. Beugen replied. Cause submitted.

D05549 Howard v. County of San Diego

Cause called on merits. Karen R. Frostrom, Esq. argued for appellant. Judith A. McDonough, Deputy County Counsel, argued for respondent. Ms. Frostrom replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 13, 2010 (Continued)

Court recessed at 9:50 a.m. to change panel members.

New panel members: The Honorable Judith Haller, Acting Presiding Justice, and
The Honorable Associate Justices James McIntyre and Terry O'Rourke

D054770 People v. Dudley

Cause called on merits. Roland J. Haddad, Esq. argued for appellant.
Deborah Cochran, Certified Law Student, argued for respondent. Cause submitted.

D054692 People v. Attard

Cause called on merits. Faryar F. Farmani, Esq. argued for appellant. Scott Taylor,
Deputy Attorney General, argued for respondent. Mr. Farmani replied.
Cause submitted.

Court recessed at 10:19 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and
 The Honorable Associate Justices Patricia Benke and Richard Huffman
Clerk: D. Moore

D054139 Milan v. City of Holtville

Cause called on merits. Steven M. Walker, Esq. argued for appellant.
David A. Kay, Esq. argued for respondent. Mr. Walker replied. Cause submitted.

Court recessed at 2:03 p.m. to change panel members.

New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and
The Honorable Associate Justices Richard Huffman and Joan Irion

D054878 Air Machine COM SRL v. Superior Court/Sukumar et al.-RPI

Matter called on merits. Tanya M. Schierling, Esq. argued for petitioner.
Frederic D. Cohen, Esq. argued for real party in interest. Ms. Schierling replied.
Cause submitted.

D055266 CMRE Financial Services, Inc. v. Parton

Cause called on merits. Daniel Lee Benson, Esq. argued for appellant.
Franklin J. Love, Esq. argued for respondent. Mr. Benson replied.
Cause submitted.

Court recessed at 3:15 p.m. until Wednesday, April 14, 2010 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 14, 2010

D055056 People v. Cortez

The judgment is reversed as to the defendant's sentence, the sentence is vacated, and the matter is remanded for resentencing in accordance with the directions provided in this opinion and *Cortez I*. The judgment is otherwise affirmed. McDonald, J.; We Concur: Nares, Acting P.J., McIntyre, J.

Court convened at 9:00 a.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and
 The Honorable Associate Justices Alex McDonald and James McIntyre
Clerk: D. Moore

D054989 Sixuvus, Ltd. v. Willis

Cause called on merits. Michael Edward Moore, Esq. argued for appellant. Jeffrey Charles Briggs, Esq. argued for respondent, telephonically. Mr. Moore replied. Cause submitted.

D053587 Castro et al. v. SDG&E

Cause called on merits. Richard H. Benes, Esq. argued for appellant, SDG&E. John Morris, Esq. argued for appellant, Castro. Mr. Benes replied. Mr. Morris replied. Cause submitted.

Court recessed at 9:51 a.m. to change panel members.

New panel members: The Honorable Judith Haller, Acting Presiding justice, and
 The Honorable Associate Justices Alex McDonald and Terry O'Rourke

D053668 People v. Turner

D053684 People v. Turner

Cause called on merits. Carl Fabian, Esq. argued for appellant. Sophia Gabrielle Roach, Deputy District Attorney, argued for respondent. Mr. Fabian replied. Cause submitted.

D055233 Goldsmith v. DMV

Cause called on merits. Philip L. Gagnon, Esq. argued for appellant. Theodore S. Dracar, Deputy Attorney General, argued for respondent. Mr. Gagnon replied. Cause submitted.

Court recessed at 10:45 a.m. until Thursday, April 15, 2010 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 14, 2010 (Continued)

Court convened at 1:30 p.m. at UCSD

Present: The Honorable Judith McConnell, Presiding Justice, and
The Honorable Associate Justices Cynthia Aaron and Joan Irion
Clerk: Mr. Lane

D055092 People v. Holiday
Cause called on merits. Elizabeth Garfinkle, Esq. argued for appellant.
Tami Hennick, Deputy Attorney General, argued for respondent. Ms. Garfinkle
replied. Cause submitted.

Present: The Honorable Judith McConnell, Presiding Justice, and
The Honorable Associate Justices Patricia Benke and Cynthia Aaron

D055494 Arthur v. Department of Motor Vehicles
Cause called on merits. Paul H. Neuharth, Esq. argued for appellant.
Terry Russell Price, Esq., Deputy Attorney General, argued for respondent.
Mr. Neuharth replied. Cause submitted.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and
The Honorable Associate Justices Cynthia Aaron and Joan Irion

D055305 Wallace v. GEICO General Insurance Company et al.
Cause called on merits. John Albert Girardi, Esq. argued for appellant.
Rick Derevan, Esq. argued for respondent. Mr. Girardi replied. Cause submitted.

UCSD oral argument adjourned at 3:10 p.m.

D055093 People v. Fausto
The trial court is directed to modify the judgment as to appellant Fausto as
set forth in this opinion. In all other respects the judgment is affirmed.
Huffman, J.; We Concur: Benke, Acting P.J., O'Rourke, J.

D055634 In re L.G., a Juvenile
The judgment is affirmed. Aaron, J.; We Concur: Benke, Acting P.J., Huffman, J.

D057022 In re Corotan on Habeas Corpus
The petition is denied.

D055681 People v. Luera, Jr. et al.
The petition for rehearing is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

April 14, 2010 (Continued)

D055378 People v. Sinclair

Sinclair remains convicted on counts 1 through 4. Sinclair's convictions on counts 3 and 4 are stricken insofar as they are premised on offenses committed against Maes and Lopez. The section 12022.7, subdivision (a) enhancements attached to counts 3 and 4 as to Maes and Lopez are stricken. The trial court is directed to prepare a new abstract of judgment in accordance with this disposition, and to forward the abstract of judgment to the Department of Corrections and Rehabilitation. As so modified, the judgment is affirmed.
Aaron, J.; I Concur: McConnell, P.J., I Concur in the Result: Haller, J.

D054866 Risely v. Interinsurance Exchange of the Automobile Club

The petition for rehearing is denied.

D056265 Johnson v. Nago

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.220(a). The appeal is dismissed.

D057136 In re Vasquez on Habeas Corpus

The petition is denied without prejudice to refiling in the San Diego County Superior Court.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 15, 2010

- D055195 People v. Leon**
The judgment is affirmed. McDonald, J.; We Concur: Nares, Acting P.J., Haller, J.
- D056294 In re Brianna T., a Juvenile**
The orders are affirmed. Haller, J.; We Concur: Benke, Acting P.J., McIntyre, J.
- D052612 Coast Intelligen, Inc., et al. v. David Lessser**
The judgment is affirmed. Each party shall bear its own costs on appeal.
McDonald, J.; We Concur: Huffman, Acting P.J., Aaron, J.
- D056413 J.C. Towing, Inc. v. Road One West, Inc.**
Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal Rule of Court, rule 8.244 (c) (2).) Each party to bear own costs on appeal.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and
 The Honorable Associate Justices Patricia Benke and Cynthia Aaron
Clerk: D. Moore

- D054950 Riazati v. Oliver et al.**
Cause called on merits. Manuchehr Riazati argued for appellant in pro per.
James R. O'Day, Esq. argued for respondent. Cause submitted.

Court recessed at 9:13 a.m. to change panel members.

New panel members: The Honorable Judith McConnell, Presiding Justice, and
 The Honorable Associate Justices Cynthia Aaron and Joan Irion

- D056479 People v. Defroe**
Cause called on merits. Patricia A. Andreoni, Esq. argued for appellant.
Lynne McGinnis, Deputy Attorney General, argued for respondent. Ms. Andreoni
replied. Cause submitted.

Court recessed at 9:37 a.m. to change panel members.

New panel members: The Honorable Judith McConnell, Presiding Justice, and
 The Honorable Associate Justices Richard Huffman and Joan Irion

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

April 15, 2010 (Continued)

D055025 Guffey v. Xtra Storage Limited Partnership et al.

Cause called on merits. William O. Guffey argued for appellant in pro per. Kenneth A. Rutan, Esq. argued for respondent. Mr. Guffey replied. Cause submitted.

D053377 People v. Roberts et al.

Cause called on merits. Allen R. Bloom, Esq. argued for appellant, Roberts. Daniel G. Koryn, Esq. argued for appellant, Pettis. Christopher Beesley, Deputy Attorney General, argued for respondent. Mr. Bloom replied. Mr. Koryn replied. Cause submitted.

Court recessed at 10:35 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and
 The Honorable Associate Justices Judith Haller and Terry O'Rourke

Clerk: D. Moore

D053956 Smith et al. v. DiPerto et al.

Cause called on merits. Edward J. McIntyre, Esq. argued for appellant. David A. English, Esq. argued for respondent. Mr. McIntyre replied. Cause submitted.

Court recessed at 2:01 p.m. to change panel members.

New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and
 The Honorable Associate Justices James McIntyre and Joan Irion

D053725 People v. Berggren

Cause called on merits. Cathryn Ember Lintvedt, Esq. argued for appellant. Daniel Brian Rogers, Esq. argued for respondent. Ms. Lintvedt replied. Cause submitted.

Court recessed at 2:31 p.m. to change panel members.

New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and
 The Honorable Associate Justices Alex McDonald and James McIntyre

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

April 15, 2010 (Continued)

D055745 County of San Diego et al. v. ABC Appeals Board et al.

Cause called on merits. Carra Lassman Rhamy, Deputy County Counsel, argued for petitioner. Robert B. Coffin, Esq. argued for petitioner, Coffin. Elizabeth Vann, Deputy Attorney General, argued for respondent, Department of ABC. William R. Winship, Esq. argued for real party in interest, Barona Tribal Gaming Authority. Ms. Rhamy replied. Mr. Coffin replied. Cause submitted.

Court adjourned at 3:17 p.m.

D057049 Krystal v. Superior Court of San Diego County/The Regents of the State of California

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 16, 2010

- D054456 People v. Owen**
The order denying Owen's petition for a writ of error coram nobis is affirmed.
Aaron, J.; We Concur: McConnell, P.J., Haller, J.
- D054912 California Valley Miwok Tribe v. California Gambling Control Commission**
The judgment of dismissal is reversed, and the action is remanded
for further proceedings consistent with this opinion.
Irion, J.; We Concur: Nares, Acting P.J., McIntyre, J.
- D054272 People v. Jones**
The appeal is dismissed. Irion, J.; We Concur: Benke, Acting P.J., Huffman, J.
- D057150 People v. Martin**
The notice of appeal is premature because no appealable order or judgment has yet
been entered. The appeal is dismissed without prejudice to refiling a notice of
appeal after an appealable order or judgment has been entered.
- D053952 People v. Sengamphan**
The petition for rehearing is denied.
- D054984 People v. Roberts**
The judgment is affirmed. Irion, J.; We Concur: Huffman, Acting P.J., Aaron, J.
- D055264 In re Fredrick N., a Juvenile**
The order is affirmed. Haller, J.; We Concur: McConnell, P.J., McDonald, J.
- D055713 In re Morgan S., a Juvenile**
D056295 In re Morgan S., a Juvenile
(Consolidated) The orders are affirmed.
Huffman, J.; We Concur: McConnell, P.J., Nares, J.
- D056268 Correia v. Nago**
Appellant has failed to file a brief after notice given pursuant to California Rules of
Court, rule 8.220(a). The appeal is dismissed.
- D055331 People v. Hernandez**
The judgment is affirmed. Haller, J.; We Concur: Nares, Acting P.J., McDonald, J.
- D057037 Burnham Institute v. Parsons**
Because appellant did not timely pay the filing fee, the appeal is dismissed.
(Cal. Rules of Court, rule 8.100(c)(3).)

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
April 16, 2010 (Continued)

D053980 Hardage Hotels X, LLC et al. v. First Co.

The judgment is affirmed. Because we affirm the judgment, First Co.'s protective cross-appeal is dismissed as moot. First Co. is entitled to costs on appeal.
Aaron, J.; We Concur: McIntyre, Acting P.J., Irion, J.

D056141 People v. Thomas

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately.

D055769 People v. Gonzalez

The judgment is affirmed.
McDonald, J.; We Concur: Huffman, Acting P.J., Irion, J.

D056903 In re Estrada on Habeas Corpus

For good cause shown, respondent is ordered to show cause why the relief requested should not be granted. Respondent may file a return within 30 days of this order. Petitioner may file a traverse within 20 days after the return is filed. Absent a request by the parties within 10 days after the return is filed, oral argument will be deemed waived. If a party requests oral argument, the request should be in letter form with proof of service on the other parties. The letter should also identify the focus of the party's argument and the amount of time requested, not to exceed 15 minutes. Petitioner's motion to permit filing of oversized brief is granted.

D055681 People v. Luera, Jr. et al.

Plaintiff's petition for rehearing is granted.